IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-453 of 2018 (O&M)
Date of Decision:11.10.2022

State of Punjab and others

…Appellants

Versus

Mehakpreet Kaur @ Mehak and another

….Respondents

Coram : HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Rohit Ahuja, DAG, Punjab, for the appellant.
Mr. Amrik Singh, Advocate, for the respondents

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JAGMOHAN BANSAL, J.

1. The instant appeal, under clause X of Letters Patent of this Court, is directed against order dated 28.11.2017 passed by learned Single Judge of this Court in CWP No. 12977 of 2015 whereby learned Single Judge has granted interest @ 9% per annum on delayed release of family pension.

Brief facts:

2. Brief facts emerging from the record and arguments of both sides are that one person namely Bharpur Singh was working as Patwari in Tehsil Payal. After death of his wife on 12.7.2003, he performed second marriage with Manpreet Kaur. From the first wedlock, Bharpur Singh was blessed with two children and unfortunately, out of them, one was of unsound mind. Bharpur Singh was blessed with one daughter from second

marriage. Bharpur Singh while in service, passed away on 18.10.2009. He was survived by his wife, two daughters, one son and mother. Within one month from the date of death of Bharpur Singh, his second wife also passed away on 20.11.2009. Surjit Kaur, mother of Bharpur Singh passed away on 10.8.2013. Elder daughter of Bharpur Singh was married at the time of his death and second daughter was just three years old.

The appellant-State paid leave encashment Rs. 2,42,000/- to legal heirs of Bharpur Singh on 28.6.2010. Payment towards GPF amounting to Rs. 1,17,886/- was made on 31.5.2011. An amount of Rs. 50,000/- towards ex-gratia grant was paid on 31.1.2011 and similarly, payment of insurance fund was made on 27.7.2011. In this way, the appellant-State cleared all the dues of deceased employee within a span of one year from the date of his death, however, failed to start family pension to dependents of the deceased employee.

The appellant-State prepared family pension case of the deceased employee and sent the same to the office of Accountant General, Punjab, Chandigarh on 12.7.2010, however, office of Accountant General with some objections returned the file on 30.8.2010 (Annexure R-2/1T). The prime objection of office of Accountant General was that family members of deceased had not submitted guardianship certificate. The office of Accountant General vide letter dated 25.4.2011 (Annexure P-4) again asked appellant-State to forward case of deceased after complying with objection raised on 30.8.2010. The objection dated 30.8.2010 and letter dated 25.4.2011 (Annexure A-2) of office of Accountant General were communicated to appellant-State as well as Surjit Kaur mother of the deceased.

Respondent No. 2 i.e. elder daughter of deceased approached civil Court with a prayer that she may be declared legal guardian of Mehakpreet Kaur @ Mehak-respondent No. 1 as well Harmit Singh son of the deceased-employee.

Learned Additional Civil Judge (Senior Division), Dhuri vide order dated 9.12.2014 (Annexure P-7) appointed Kamlesh Kaur as legal guardian of Mehakpreet Kaur @ Mehak, however, learned Additional Civil Judge (Senior Division) declined petition of Kamlesh Kaur qua her appointment as legal guardian of Harmit Singh who was of unsound mind. It is apt to mention here that Harmit Singh was son of late Bharpur Singh who passed away on 4.12.2015 (Annexure P-6).

The writ petitioners-respondents preferred CWP No. 12977 of 2015 seeking direction to the present appellants to release pension alongwith interest @ 18% per annum. The writ petition came up for hearing before learned Single Judge of this Court who vide order dated 28.11.2017 allowed the same with a direction to appellant-State to pay interest @ 9% per annum on the delayed payment of pension. Learned Single Judge directed that interest shall be payable from the expiry of three months from the date of death of Bharpur Singh till the date of actual payment. It needs to be mentioned here that appellant-State had paid entire arrears of pension Rs. 14,43,574/- on 19.1.2017, during the pendency of the case.

3. There is no dispute qua payment of retiral benefits and dispute is confined to liability of interest. Learned Single Judge has ordered to make payment of interest from the expiry of three months from the date of

death of Bharpur Singh till the date of actual payment of arrears of pension.

4. The appellant-State has preferred present appeal seeking setting aside of order of learned Single Judge qua direction to make payment of interest @ 9% per annum.

<u>Contention of the appellant-State:</u>

5. Learned counsel for the appellant-State submitted that there is no delay on the part of State, therefore, State is not liable to make payment towards interest. The deceased was married twice and as per his service book record, he had declared his first wife (Kulwinder Kaur) as nominee and after death of his wife, he did not substitute name of his second wife or any other family member. He was having two children from his first wife and one female child from second wife. At the time of his death, his second wife and mother were alive, however, second wife passed away within one month from the date of death of deceased employee. The State made payment towards all dues which were in the hands of State authorities, however, pension could not be released because there were different sets of legal heirs. The elder daughter was married still she was making claim and office of Accountant General raised objection qua non-submission of guardianship certificate which could be complied with by the respondents. The death of mother, second wife and elder son further multiplied complexities. The elder daughter of deceased in the year 2012 approached civil Court for appointing her legal guardian of minor daughter and unsound mind son of deceased Bharpur Singh. Learned Additional Civil Judge (Senior Division) vide order dated 9.12.2014 appointed respondent No. 2 -elder daughter of deceased, legal guardian of Mehakpreet Kaur @ Mehak

i.e. minor daughter of deceased. Respondent No. 2 was appointed legal guardian on 9.12.2014 still she did not supply copy of order passed by learned civil Court to appellant-State. Thus, it was not possible to know that respondent had secured guardianship certificate from competent court. Learned civil Court had also declined prayer of respondent No. 2-writ petitioner to appoint her guardian of Harmit Singh i.e. son of deceased which indicates that appointment of legal guardian was not mere formality and it was duty of respondents to comply with requirement of law and procedure.

Contention of the Respondent:

6. Learned counsel for the respondent contended that appellant-State made payment towards all retiral benefits in 2010-2011, therefore, State was well aware about status of legal heirs and it could very well make payment towards pension and in any case, they were bound to release pension after order passed by learned civil Court whereby respondent No. 2 was appointed legal guardian of respondent No. 1.

7. We have heard learned counsel for the parties and perused the record with their able assistance.

Findings and conclusion:

8. Concededly, the appellant-State except pension had made payment towards all retiral benefits of deceased Bharpur Singh within one year from the date of his death and there were more than one legal heirs of deceased and their status was neither disclosed to State nor anybody was appointed as guardian of minor and unsound son of the deceased. The wife, minor daughter, unsound mind son and mother of deceased were entitled to

family pension, however, deaths took place in the family one after another. The deceased had declared his first wife as nominee in the service book record, however, he failed to disclose status of his second wife and nobody was appointed as nominee. Unfortunately, second wife of deceased passed away within one month from the date of death of the deceased employee. This fact substantially changed the status of admissible family pension. The appellant-State well within time forwarded pension case to the Accountant General who raised some objections. The objection qua guardianship certificate cannot be called as mechanical or whimsical especially when there were two legally wedded wives of deceased and there were children from both the marriages. The appellant authorities were bound to have cleared the status of all the dependents and thereafter pension could be released. The respondent No. 2 filed civil suit before learned civil Court in 2012 and succeeded to get declared herself guardian of respondent No. 1 Mehakpreet @ Mehak, minor daughter of the deceased. The respondent has failed to rebut the contention of the appellant-State that prior to filing of writ petition before this Court, the respondent did not submit guardianship certificate with State authorities which was main cause of delay in payment of arrears of pension and commencement of regular pension. Once the family of the deceased was being asked to submit the guardianship certificate, the interest liability could not be imposed upon the State.

In the obtained factual matrix and contention of both sides, we find that there is certainly delay in payment of arrears of pension as well commencement of family pension.

A full Bench of this Court in **A.S.Randhawa vs. State of**

Punjab 1998 (1) SCT 343 while upholding maintainability of writ petition seeking interest on delayed payment of retiral benefits has held that State is liable to pay interest, if there is delay on the part of State. If the retiree is able to demonstrate that there is no delay on his part, onus lies on the State to prove that there is no delay on the part of State. If State fails to discharge its burden to prove that there was no delay on its part, the State is liable to pay interest. The Court has held :-

> *"9...........In this view of the matter, it follows that when a retired Government employee can seek his remedy by invoking the jurisdiction of this court under Article 226 of the Constitution to claim pension and retiral benefits by the issuance of a writ of mandamus or any other order or direction, he is equally entitled to seek relief in the same way for claiming interest only on delayed payments which is an enforcement of an incident of the same right. It will, of course, be open to the State to plead and prove that there has been no delay much less culpable delay on its part in disbursing the amount so as to entitle a retired employee to any interest as claimed by him. To put it differently, if a retired Government employee can show that there was delay in the payment of pension or any other retiral benefit to him, the onus would be on the State to show that it is not guilty of any culpable delay and if it is unable to discharge the onus or satisfy the court as to the reasons for the delay, a direction to pay interest for the period of delay would invariably issue."*

There is certainly delay, however, it is on the part of both sides. Thus, it would not be just and fair to hold State exclusively responsible. Nevertheless, there is lapse on the part of State after filing of writ petition before this Court. As soon as writ petition was filed in this Court, the State got all the documents and information. Thus, it was duty of State to make payment of arrears as well start family pension at the earliest whereas appellant-State made payment of arrears of Rs. 14,43,574/- on 19.1.2017. The writ petition was filed in June 2015. Thus, we deem it appropriate to direct appellant-State to pay interest w.e.f. 1.7.2015 till the date of payment i.e. 19.1.2017.

8. In view of the above findings, we deem it appropriate to partially allow the present appeal and direct the appellant-State to pay interest @ 9% per annum as awarded by learned Single Judge for the period from 1.7.2015 to 18.1.2017.

The appeal is disposed of in the above terms.

Pending miscellaneous application(s), if any, shall stand disposed of.

(G.S.SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

11.10.2022

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes